

FILED  
Clark  
District Court

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For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

Attorney for Defendant

**IN THE UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN MARIANA ISLANDS**

UNITED STATES OF AMERICA ) CRIMINAL ACTION NO. 05-00027  
Plaintiff )  
v. )  
ZHENG MING YAN ) MEMORANDUM SUPPORTING  
Defendant ) PARTIAL DISMISSAL FOR  
 ) MULTIPLICITY  
 )  
 ) Date: May 11, 2006  
 ) Time: 9:00 a.m.  
 )

## I. COUNTS 2, 3, AND 4 ARE MULTIPLICIOUS

Generally, multiplicity is the charging of a single offense in more than one count.

*Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180 (1982); *United States v. Taitano*, 2004 WL 2126853(D.N.Mar.I.,2004). Such an indictment seeks to impose multiple punishments for what is in essence one crime. *United States v. Liu*, 2000 WL 34226921 (D.N.Mar.I. 2000).The test for multiplicity is whether each count separately violated statutory provision “requires proof of an additional fact which the other does not.” *Blockburger*, , 284 U.S. at 304, 52 S.Ct. at 182. *Taitano*, *supra*; *Liu*, *supra*.

Counts 2, 3 and 4 each charge a violation of 18 U.S.C. § 1591(a) which criminalizes a person knowingly:

1 (1) in or affecting interstate or foreign commerce, or within the special maritime  
2 and territorial jurisdiction of the United States, recruits, entices, harbors,  
3 transports, provides, or obtains by any means a person; **or**

4 (2) benefits, financially or by receiving anything of value, from participation in a  
5 venture which has engaged in an act described in violation of paragraph (1),

6 knowing that force, fraud, or coercion described in subsection (c)(2) will be  
7 used to cause the person to engage in a commercial sex act,....

8 A person can violate § 1591(a) by two means. Section 1591(a)(1) is violated by recruiting,  
9 enticing, harboring, transporting, providing, or obtaining by any means necessary a person knowing  
10 that force, fraud, or coercion will be used to cause the person to engage in a commercial sex act.

11 Section 1591(a)(2) is violated by benefitting, financially or by receiving anything of value from  
12 participating in a venture which causes a person to engage in a commercial sex act by recruiting,  
13 enticing, harboring, transporting, providing, or by any means. Pleading each of these theories in a  
14 single count is proper and is not duplicitous. *United States v. UCO, Inc.*, 546 F.2d 833, 838 (9<sup>th</sup>  
15 Cir. 1976)[generally, when a statute encompasses various modes of violation requiring different  
16 elements of proof, the different means can be pled in a single count]. for because when a statute  
17 provides for different means].

18 In this case, counts two, three, and four of the superseding indictment each charge a  
19 violation of § 1591(a)(2). As noted above, § 1591(a)(2) criminalizes participation in a venture. A  
20 “venture” is defined as “any group of two or more individuals associated in fact, whether or not a  
21 legal entity.” 18 U.S.C. § 1591(c)(3). A reading of the superseding indictment reveals that counts  
22 two, three, and four each plead the same venture. In other words, same venture is charged in three  
23 different counts. The proof necessary to convict under § 1591(a)(2) is the same in counts two,  
24 three, and four. Section 1591(a)(2) does not require that a defendant benefit from any specific  
25 person. It only proscribes benefitting from the venture. There is only one venture and the statute  
26

1 does not make each distinct or discrete benefit received a separate offense. This renders counts  
 2 two, three and four multiplicitous. *See e.g. United States v. Stewart*, 420 F.3d 1007, 1013 - 1015  
 3 (9<sup>th</sup> Cir. 2005).

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5 **II. COUNTS SEVEN AND EIGHT ARE MULTIPLICIOUS**

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7 Counts 7 and 8 each allege a violation of 18 U.S.C. § 2314. What the statute prohibits is (1) the  
 8 devising of a scheme or artifice to defraud or obtain money by false pretenses or representations  
 9 and (2) causing or inducing an intended victim to travel in interstate commerce with intent to  
 10 defraud that person of money or property having a value of \$5,000 or more. *United States v. Reina*,  
 11 446 F.2d 16, 17 (9<sup>th</sup> Cir. 1971). What the statute essentially prohibits is the scheme. Each victim of  
 12 the scheme does not constitute a separate offense. *See Reina*, 446 at 17[“No attack is made on the  
 13 sufficiency of the evidence to support the jury’s conclusion that appellant engaged in a scheme to  
 14 defraud and, in the execution of that scheme, induced victims to travel in interstate commerce.”].

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16 In this case, the indictment alleges one scheme to defraud in violation of § 2314. The  
 17 scheme in Count 7 is the same as the scheme in Count 8. That fact that Wei Qiuxiang traveled on a  
 18 different date does not result in a new offense. Indeed, the relevant portion of § 2314 applicable to  
 19 counts 7 and 8 is as follows:

20 [w]hoever, having devised or intending to devise any scheme or artifice to  
 21 defraud, or for obtaining money or property by means of false or fraudulent  
 22 pretenses, representations, or promises, transports or **causes to be transported**,  
 23 **or induces any person or persons to travel** in, or to be transported in interstate  
 24 or foreign commerce in the execution or concealment of a scheme or artifice to  
 defraud that person or those persons of money or property having a value of  
 \$5,000 or more (emphasis added).

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26 The plain meaning of § 2314 shows that a single scheme can involve multiple persons. This  
 makes Counts 7 and 8 multiplicitous as both counts involve the same scheme.

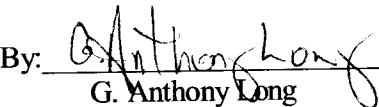
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CONCLUSION

Counts 2, 3, and 4 are multiplicitous. Two of the counts should be dismissed. Similarly,  
counts 7 and 8 are multiplicitous. One of the counts should be dismissed.

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